

IN THE SENATE OF THE UNITED STATES.

APRIL 15, 1896.—Referred to the Committee on Indian Affairs and ordered to be printed.

Mr. PETTIGREW presented the following

**MEMORIAL OF THE CHOCTAW AND CHICKASAW NATIONS OF  
INDIANS, RELATIVE TO THEIR CLAIM TO AN INTEREST IN THE  
LANDS EMBRACED IN GREER COUNTY, OKLA.**

WASHINGTON, D. C., *April 15, 1896.*

To the Senate and House of Representatives, the President of the United States, the Secretary of the Interior, the Attorney-General, and all officers of the United States having in charge, or who may hereafter have in charge, the disposition of the lands embraced in Greer County, Okla., being the land the title to which was recently adjudicated in the Supreme Court of the United States in the case of *The United States v. Texas*, original docket, No. 3, October term, 1895.

The memorial of the Choctaw and Chickasaw Nations of Indians respectfully shows:

In view of possible legislation by the Congress of the United States, at the present session thereof, relating to Greer County, Okla., your memorialists, the Choctaw and Chickasaw Nations of Indians, desire to remind the Government of the United States of their claim to an interest in the lands embraced in said county.

Your memorialists claim that the Government of the United States only has the right to use the lands embraced in the said Greer County for the settlement thereon of such friendly bands or tribes of Indians as the Government may decide to place upon said lands, the same being within the limits of what is known as the "Leased district," to wit, that section of country which is bounded on the east by the ninety-eighth degree of west longitude, on the west by the one hundredth degree of west longitude, on the north by the Canadian River, and on the south by the Red River, and that, upon their sale or diversion to any other use than the settlement thereon of said Indians, your memorialists will become entitled to payment, in money, by the United States for the full value of such interest in said lands as your memorialists may, by competent authority, be adjudged to be entitled to.

Your memorialists further say that the grounds upon which they base their claim to said lands are, at least in part, set forth in the petition filed by them in the case, now pending in the Court of Claims, of your memorialists against the United States and the Wichita and affiliated bands of Indians, No. 18932, the said suit having been brought by your memorialists under and by virtue of the provisions of the special act of Congress approved March 2, 1895, entitled "An act making

appropriations for the current and contingent expenses of the Indian Department, and fulfilling treaty stipulations with various Indian tribes, for the fiscal year ending June 30, 1896, and for other purposes," to which petition, and to the treaties, acts of Congress, reports of committees, official communications of heads of Departments, and other documents cited therein, your memorialists beg leave to refer, and to make the same a part of this memorial, a copy of the same being hereto attached. Your memorialists especially refer to the provisions of section 15 of the act of March 3, 1891 (26 Stats., 1025), quoted on pages 20 and 21 of said petition.

And your memorialists say that the principal object of and reason for the presentation of this memorial is to notify the United States that, should the Government attempt to sell the lands embraced in the said Greer County, or to make any disposition of them other than the settlement thereon of friendly bands or tribes of Indians, as aforesaid, your memorialists will insist upon payment in full being made by the United States for the value of the said interest of your memorialists in said lands, and that they will prosecute their said claim therefor in every legitimate and proper way, and in any court or tribunal to which the same, by act of Congress or otherwise, may be referred for adjudication and settlement.

Your memorialists make known their claim to an interest in said lands, also, to the end that, should the United States so decide to sell or dispose of said lands otherwise than by the settlement thereon of Indians, they may do so, having in view the claim of your memorialists for the value of their said interest therein.

SHELLABARGER & WILSON,

*Attorneys for the Choctaws.*

H. E. PAINE,

*Attorney for Chickasaws.*

J. S. STANDLEY,

*Delegate Choctaw Nation.*

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[In the Court of Claims of the United States. The Choctaw Nation and the Chickasaw Nation, claimants, v. The United States and the Wichita and Affiliated Bands of Indians, defendants. No. 18932.]

*To the Honorable the Chief Justice and the associate justices of the United States Court of Claims:*

Your petitioners, the Choctaw Nation and the Chickasaw Nation, in their own behalf, and in behalf and for the benefit of certain individuals who are members and citizens of said nations, and interested in the subject-matter of this petition, respectfully represent:

#### FIRST.

That this petition is filed, and the jurisdiction of this court invoked, under and by virtue of certain provisions of an act of Congress approved the 2d day of March, 1895, entitled "An act making appropriations for the current and contingent expenses of the Indian Department, and fulfilling treaty stipulations with various Indian tribes for the fiscal year ending June 30, 1896, and for other purposes." These provisions are in the words and figures following, to wit:

That, as the Choctaw and Chickasaw nations claim to have some right, title, and interest in and to the lands ceded by the foregoing agreement, which claim is controverted by the United States, jurisdiction be, and is hereby, conferred upon the

Court of Claims to hear and determine the said claim of the Choctaws and Chickasaws, and to render judgment thereon, it being the intention of this act to allow said Court of Claims jurisdiction, so that the rights, legal and equitable, of the United States and the Choctaw and Chickasaw nations, and the Wichita and affiliated bands of Indians in the premises, shall be fully considered and determined, and to try and determine all questions that may arise on behalf of either party in the hearing of said claim; and the Attorney-General is hereby directed to appear in behalf of the Government of the United States, and either of the parties to said action shall have the right of appeal to the Supreme Court of the United States: *Provided*, That such appeal shall be taken within sixty days after the rendition of the judgment objected to, and that the said courts shall give such causes precedence: *And provided further*, That nothing in this act shall be accepted or construed as a confession that the United States admit that the Choctaw and Chickasaw nations have any claim to or interest in said lands, or any part thereof.

That said action shall be presented by a single petition, making the United States and the Wichita and affiliated bands of Indians parties defendant, and shall set forth all the facts on which the said Choctaw and Chickasaw nations claim title to said land; and said petition may be verified by the authorized delegates, agents, or attorneys of said nations upon information and belief as to the existence of such facts, and no other statement or verification shall be necessary: *Provided*, That if said Choctaw and Chickasaw nations do not bring their action within ninety days from the approval of this act, their claim shall be forever barred: *And provided further*, That it shall be the duty of the Attorney-General of the United States, within ten days after the filing of said petition, to give notice to said Wichitas and affiliated bands, through the agents, delegates, attorneys, or other representatives of said bands, that said bands are made defendants in said suit, of the purpose of said suit, that they are required to make answer to said petition, and that Congress has, in accordance with article five of said agreement, adopted this method of determining their compensation, if any. And the answer of the Wichitas and affiliated bands shall state the facts on which they rely for compensation, and may be verified by their agents, delegates, attorneys, or other representatives, upon their information and belief as to the existence of such facts, and no other statement or verification shall be necessary: *And provided also*, That said Wichitas and affiliated bands shall file their answer in said suit within sixty days after they shall receive from the Attorney-General of the United States the notice herein provided for, unless further time is granted by the court, and in the event of failure to answer they may be barred from all claim in the premises aforesaid.

The said Court of Claims shall receive and consider as evidence in the suit everything which shall be deemed by said court necessary to aid it in determining the questions presented and tending to shed light on the claim, rights, and equities of the parties litigant, and issue rules on any Department of the Government thereof if necessary.

It is hereby further provided that said Choctaw and Chickasaw Nations may, at any time before the rendition of final judgment in said case by the Court of Claims, negotiate with the commissioners appointed under section sixteen of the act of Congress approved the third day of March, eighteen hundred and ninety-three (Twenty-seventh Statutes, page six hundred and forty-five), or with any successor or successors in said commission, for the settlement of the said matters involved in said suit, and move the suspension of such action until such negotiations shall be accepted or rejected by Congress, such settlement, however, to be made with the concurrence of the Secretary of the Interior and Attorney-General of the United States.

The following additional provisions, material to the present case, are also, in substance, embraced in said act of March 2, 1895, taken along with the provisions of the agreement of June 4, 1891, mentioned therein, and which said act confirms:

(a) Said agreement of June 4, 1891, is, by said act of March 2, 1895, "accepted, ratified, and confirmed," as provided in said act.

(b) There should be allotted to each and every member of the Wichita and affiliated bands of Indians, in the Indian Territory, native and adopted, 160 acres of land, one-half thereof to be allotted in grazing lands; the allotments to be selected within ninety days from the ratification by Congress of said agreement of June 4, 1891; the titles to the land taken under such allotments to be held in trust for twenty-five years, in the manner and to the extent provided for in the act of Congress approved February 8, 1887. (24 Stats., 388.)

(c) Whenever the lands acquired under said agreement of June 4,

1891, shall by operation of law, or proclamation of the President, be open to settlement, they shall be disposed of under the general provisions of the homestead and town-site laws of the United States, provided that, in addition to the land-office fees prescribed by the statute, the entrymen shall pay \$1.25 an acre for the land entered, at the time of submitting final proof; and that all such entries, where the entryman has resided upon and improved the land by him entered, in good faith, for a period of fourteen months, may be commuted to cash upon the payment of \$1.25 per acre. Sections 16 and 36 and 13 and 33 in each township shall not be subject to entry, but reserved—sections 16 and 36 for the use of common schools, and sections 13 and 33 for university, agricultural college, normal school, and public buildings of the Territory and future State of Oklahoma.

(d) As fast as the lands open for settlement under the act are sold the money received from such sales shall be deposited in the Treasury, subject to the judgment of the court in the suit provided for in said act, less a reservation of not exceeding \$15,000 for a designated purpose.

#### SECOND.

Claimants further show that the Choctaw and Chickasaw nations are now, and ever since and long before the organization of the Government of the United States were and have been, Indian tribes, occupying, from time to time, different portions of the territories now embraced within the United States; and have been, by the Government of the United States, since its organization, recognized and dealt with as such Indian tribes according to the policies which the Government has pursued in regard to the rights of such tribes and according to the duties and obligations which the said Government has accorded to the Indians as the aboriginal possessors and inhabitants of the said territories.

#### THIRD.

Claimants further show that, at and prior to the 18th day of October, 1820, the said Choctaw Nation of Indians was the possessor of certain lands east of the Mississippi River in the States of Mississippi and Alabama, which, by the first article of the treaty of October 18, 1820 (7 Stat., 211), between the United States and the said nation, they ceded to the United States. In consideration of said cession, and in part satisfaction therefor, the United States ceded to the Choctaw Nation the tract of country described in the second article of said treaty, including, among others, the land hereinafter described, for the interest of the Choctaw and Chickasaw nations in which this action is brought. By the fourth article of said treaty the United States stipulated that the boundaries of said cession to the Choctaws should remain without alteration until the period at which said nation should become so civilized and enlightened as to be made citizens of the United States, and that Congress should lay out a limited portion or parcel of such land for the benefit of each family or individual in the nation.

Claimants hereby, by reference thereto, make the provisions of said treaty a part of this petition.

#### FOURTH.

Subsequent to said treaty of October 18, 1820, the treaty of the 20th of January, 1825 (7 Stats., 234), was made. By its first article the Choctaw Nation retroceded to the United States so much of the territory ceded to said nation by said treaty of October 18, 1820, as is

described in said article; but this retrocession did not embrace any of the land for an interest in which this action is prosecuted.

Claimants, by reference thereto, make the provisions of said first article of the treaty of January 20, 1825, a part hereof.

#### FIFTH.

Claimants further say that, on the 27th of September, 1830, a treaty was made and entered into between the United States and the said Choctaw Nation, by the second article of which (7 Stats., 333) it was agreed that the United States should cause to be conveyed to the Choctaw Nation a tract of country west of the Mississippi River, in fee simple, to them and to their descendants, and to inure to them while they should exist as a nation, beginning near Fort Smith where the Arkansas boundary crosses the Arkansas River, running thence to the source of the Canadian Fork, if within the limits of the United States, or to those limits, thence due south to the Red River and down the Red River to the western boundary of the Territory of Arkansas, thence north along that line to the beginning, the boundary of the same to be agreeable to the treaty made and concluded at Washington in the year 1825. In the third article of said treaty the Choctaws cede to the United States the entire country owned by them east of the Mississippi River, the land in controversy in the present case being within the territory so agreed to be ceded to the Choctaw Nation by said treaty of September 27, 1830.

Claimants, by reference thereto, make the provisions of said treaty a part of this petition.

#### SIXTH.

Claimants further say that, on the 23d day of March, 1842, a patent was issued by the United States, a copy of which is hereto attached, marked Exhibit A, conveying to the Choctaw Nation the title stipulated for in the second article of said treaty of September 27, 1830, and which patent embraced the land in controversy in the present case.

#### SEVENTH.

Claimants further show that, by a convention between the Choctaw and Chickasaw nations, dated January 17, 1837, approved by the Senate of the United States on the 25th of February of the same year, and by the President on the 4th of March, 1837, it was agreed that the Chickasaws should have the privilege of forming a district within the limits of the Choctaw country, to be held on the same terms with the Choctaws, except as to the right of disposing of it, etc., to the full provisions of which reference is here made, and the same prayed to be taken and read as a part of this petition. (See 11 Stats., 573.)

#### EIGHTH.

Claimants further show that on the 22d day of June, 1855, a convention and agreement was made and entered into between the United States and the Choctaw and Chickasaw nations of Indians (11 Stats., 611 et seq.), the parts of which material in the present case being articles 9 and 10, found on page 613 of said volume, and which articles 9 and 10 are as follows:

ARTICLE 9. The Choctaw Indians do hereby absolutely and forever quitclaim and relinquish to the United States all their right, title, and interest in and to any and all lands west of the one hundredth degree of west longitude; and the Choctaws

and Chickasaws do hereby lease to the United States all that portion of their common territory west of the ninety-eighth degree of west longitude for the permanent settlement of the Wichita and such other tribes or bands of Indians as the Government may desire to locate therein, excluding, however, all the Indians of New Mexico, and also those whose usual ranges at present are north of the Arkansas River, but including those bands whose permanent ranges are south of the Canadian, or between it and the Arkansas, which Indians shall be subject to the exclusive control of the United States, under such rules and regulations, not inconsistent with the rights and interests of the Choctaws and Chickasaws, as may from time to time be prescribed by the President for their government: *Provided, however*, The territory so leased shall remain open to settlement by Choctaws and Chickasaws as heretofore.

ARTICLE 10. In consideration of the foregoing relinquishment and lease, and as soon as practicable after the ratification of this convention, the United States will pay to the Choctaws the sum of six hundred thousand dollars, and to the Chickasaws the sum of two hundred thousand dollars, in such manner as their general councils shall respectively direct.

The lands in controversy in the present case are embraced within the lands covered by the lease named in the ninth article, above quoted, which last-named treaty is, by reference, made part of this petition.

#### NINTH.

On the 28th day of April, 1866, a treaty was entered into between the United States and the Choctaw and Chickasaw nations of Indians, to which reference is hereby made, and the same prayed to be taken and read as a part of this petition. The third article of said treaty is as follows (14 Stat., 769):

The Choctaws and Chickasaws, in consideration of the sum of three hundred thousand dollars, hereby cede to the United States the territory west of the 98th degree west longitude, known as the leased district, provided that the said sum shall be invested and held by the United States at an interest not less than five per cent, in trust for the said nations until the legislatures of the Choctaw and Chickasaw nations, respectively, shall have made such laws, rules, and regulations as may be necessary to give all persons of African descent resident in said nations at the date of the treaty of Fort Smith, and their descendants, heretofore held in slavery among said nations, all the rights, privileges, and immunities, including the right of suffrage, of citizens of said nations, except in the annuities, moneys, and public domain claimed by or belonging to said nations, respectively, and also to give to such persons who are residents, and their descendants, forty acres each of the land of said nations, on the same terms as the Choctaws and Chickasaws, to be selected on the survey of said land after the Choctaws and Chickasaws and Kansas Indians have made their selections as herein provided; and immediately on the enactment of such laws, rules, and regulations the said sum of three hundred thousand dollars shall be paid to the said Choctaw and Chickasaw nations in the proportion of three-fourths to the former and one-fourth to the latter, less such sum, at the rate of one hundred dollars *per capita*, as shall be sufficient to pay such persons of African descent before referred to as, within ninety days before the passage of such laws, rules, and regulations, shall elect to move, and actually remove, from the said nations respectively. And should the said laws, rules, and regulations not be made by the legislatures of said nations, respectively, within two years from the ratification of this treaty, then the said sum of three hundred thousand dollars shall cease to be held in trust for the said Choctaw and Chickasaw nations, and be held for the use and benefit of such persons of African descent as the United States shall remove from the said territory, in such manner as the United States shall deem proper, the United States agreeing, within ninety days from the expiration of said two years, to remove from said nations all such persons of African descent as may be willing to remove, those remaining or returning after having been removed from said nations to have no benefit of said sum of three hundred thousand dollars, or any part thereof, but shall be upon the same footing as other citizens of the United States in said nations.

The tenth article of said treaty is as follows:

The United States reaffirms all obligations arising out of treaty stipulations or acts of legislation with regard to the Choctaw and Chickasaw nations, entered into prior to the late rebellion, and in force at that time, not inconsistent herewith; and further agrees to renew the payment of all annuities and other moneys accruing

under such treaty stipulations and acts of legislation from and after the close of the fiscal year ending on the thirtieth of June, in the year eighteen hundred and sixty-six.

The forty-fifth article of said treaty is as follows:

All rights, privileges, and immunities heretofore possessed by said nations, or individuals thereof, or to which they were entitled under the treaties and legislation heretofore made and had in connection with them, shall be, and are hereby declared to be, in full force, so far as they are consistent with the provisions of this treaty.

The proportionate interest of the Choctaws and Chickasaws in the lands in controversy in the present case is fixed by the tenth article of the treaty of June 22, 1855 (11 Stats., 613), by the third and thirty-seventh articles of said treaty of April 28, 1866 (14 Stats., 769), and by the fifteenth section of the act of March 3, 1891 (26 Stats., 1025), at three-fourths in the Choctaws and one-fourth in the Chickasaws.

#### TENTH.

Claimants further aver and charge that under and by virtue of the treaties hereinabove set forth, taken and considered together, the claimants have in the premises in controversy in the present case, to wit, in the premises described in the first article of the agreement entered into at Anadarko, in the Indian Territory, on the 4th of June, 1891, by and between David H. Jerome, Alfred Wilson, and Warren G. Sayre, commissioners on the part of the United States, and the Wichita and affiliated bands of Indians, as the same is set forth in the said act of Congress approved March 2, 1895, the equitable interest hereinafter stated. The said premises are described in the first said article of the agreement of June 4, 1891, as follows:

Commencing at a point in the middle of the main channel of the Washita River, where the ninety-eighth meridian of west longitude crosses the same, thence up the middle of the main channel of said river to the line of 98° 40' west longitude, thence on said line of 98° 40' due north to the middle of the channel of the main Canadian River, thence down the middle of said main Canadian River to where it crosses the ninety-eighth meridian, thence due south to the place of beginning.

#### ELEVENTH.

Claimants further aver and charge that their said interest in the premises last above described is the full ownership of the equitable and beneficial interest and title in and to the same in the event contemplated by and provided for in the said act of March 2, 1895, to wit, in the event that the United States shall cease to appropriate and use the same for the purpose of colonizing and settling Indians thereon, as provided in the ninth article of the treaty of June 22, 1855 (11 Stats., 613), and shall make disposition thereof as a part of the public domain under the homestead laws of the United States, as modified by said act of March 2, 1895, and shall include said lands within and make them subject to the laws of an organized Territory or State of the United States.

#### TWELFTH.

Claimants further aver and charge that said lands named in said first article of the agreement of June 4, 1891, above quoted, the same being the lands for their alleged interest in which the above-quoted provisions of said act of March 2, 1895, authorizes claimants to bring suit, are still held by the United States subject to the trust which attached thereto, under the treaties hereinabove set forth, prior to the making and rati-



fication of said treaty of April 28, 1866, and notwithstanding the alleged cession contained in the third article of said last-named treaty (14 Stats., 769).

#### THIRTEENTH.

Since the said act of March 2, 1895, under the authority of which this suit is brought as aforesaid, requires that this petition "shall set forth all the facts on which the Choctaw and Chickasaw nations claim title to said land," claimants set forth the following facts and considerations in support of their averment that said lands are still held by the United States, in trust for them, notwithstanding the alleged cession contained in article 3 of said treaty of April 28, 1866, and notwithstanding any and all other facts existing:

(a) It is the settled law of the Government of the United States, applicable to the construction of treaties with the Indians, that—

the language used in treaties with the Indians should never be construed to their prejudice. If words be made use of which are susceptible of a more extended meaning than their plain import, as connected with the tenor of the treaty, they should be considered as used only in the latter sense. \* \* \* How the words of the treaty were understood by this unlettered people rather than their critical meaning should form the rule of construction. (119 U. S., 27, 28.)

(b) Applying this rule of interpretation to the language of this third article of the treaty of April 28, 1866, considering it in the light of the other provisions thereof, and of the facts and circumstances which led up to and surrounded the making of said treaty, and also considering it in the light of the subsequent action of the Government of the United States touching the effect of the same, the said language establishes the proposition that this treaty was executed by the Indians with the understanding, and under the assurance from the parties aforesaid who made the treaty on behalf of the United States, that the purchase of this land was made by the United States subject to the trust and for the purpose of setting apart the lands embraced in said cession "for the friendly tribes now in Kansas and elsewhere on such terms as may be agreed upon by the parties and approved by the Government, or such as may be fixed by the Government."

(c) One set of circumstances surrounding the making of said treaty is thus disclosed by the Annual Report of the Commissioner of Indian Affairs of 1864 (pp. 33, 34), and in which, among other things, the Commissioner states the then adopted and settled policy of the United States touching the lands in question, and other Indian lands, as follows:

Under these circumstances, I feel that I can not too strongly urge the importance of preserving the Indian country for the use of the Indians alone, and in all treaties or other arrangements which may hereinafter be made with its former owners, insisting upon, and, if need be, enforcing such terms as will secure ample homes within that country for all such tribes as, from time to time, it may be found practicable and expedient to remove thereto.

(d) By reference to the next annual report of the Commissioner of Indian Affairs, of 1865, it will be seen that the President appointed a commission, comprised of D. N. Cooley, Commissioner of Indian Affairs; Hon. Elijah Sells, superintendent of Southern Superintendency; Thomas Wistar, a leading member of the Society of Friends; Brig. Gen. W. S. Harney, of the United States Army, and Col. Eli S. Parker, of General Grant's staff, to make treaties between the United States and the Indian tribes that were convened in general council at Fort Smith, Ark.

On September 9, 1865, to the tribes then and there represented, including the Creeks, Choctaws, Chickasaws, Cherokees, Seminoles,



Osages, Senecas, Shawnees, Quapaws, Wyandottes, Wichitas, and Comanches, the Hon. D. N. Cooley (as disclosed by said annual report of 1865) addressed a speech, and, among other things, informed them that the commissioners were empowered to enter into treaties with the several tribes upon the basis of the following propositions:

(1) That such tribes must enter into a treaty for permanent peace and amity among themselves, with each other as tribes, and with the United States.

(2) The tribes settled in the Indian Territory to bind themselves, at the call of the United States authorities, to assist in compelling the wild tribes of the plains to keep the peace.

(3) Slavery to be abolished and measures to be taken to incorporate the slaves into the tribes, with their rights guaranteed.

(4) A general stipulation as to final abolition of slavery.

(5) A part of the Indian country to be set apart to be purchased for the use of such Indians from Kansas or elsewhere as the Government may desire to colonize therein.

(6) That the policy of the Government to unite all the Indian tribes of this region into one consolidated government should be accepted.

(7) That no white person, except Government employees, or officers or employees of internal improvement companies authorized by the Government, will be permitted to reside in the country, unless incorporated with the several nations.

This report says, in express words, that "with the Choctaws and Chickasaws a treaty was agreed upon on the basis of the seven propositions hereinbefore stated," except that it appears by a communication from the representatives of the loyal Choctaws, to wit, William S. and Robert B. Patton, that they ask for the following to be substituted in lieu of the seventh proposition of the series above set forth, to wit:

No white persons, except officers, agents, and employees of the Government, or of any internal improvement companies authorized by the Government of the United States, also no person of African descent, except our former slaves, or other persons of color who are now or have been residents of the Territory, will be permitted to reside in the Territory unless formally incorporated with some tribe, according to the usages of the band.

An inspection of the said treaty of 1866 will show that the substance of all these seven propositions was embodied therein, except the fifth, which fifth proposition complainants aver and charge was, on conclusive grounds and reasons, understood by the Choctaw and Chickasaw Nations to be, in substance, embodied in said treaty, and was also so understood by the United States commissioners who made it.

(e) Another circumstance showing that the parties to said treaty regarded the said fifth proposition as being, substantially, embodied therein is thus disclosed: "It is expressly provided in the tenth article of said treaty (above quoted) that all obligations arising out of treaty stipulations or acts of legislation with regard to the Choctaw and Chickasaw nations, entered into prior to the late rebellion, and in force at that time, not inconsistent herewith, are reaffirmed," and a like provision is repeated in article 45 of said treaty, declaring that "all rights, privileges, and immunities heretofore possessed by said nations, or individuals thereof, to which they were entitled under the treaties and legislation heretofore made and had in connection with them, shall be, and the same are hereby declared to be, in full force so far as they are consistent with the provisions of this treaty."

Claimants further aver and charge that there is nothing in the said third article of said treaty, or in any other part thereof, which, construed in the light of all the surrounding facts hereinabove and herein-after set forth, is inconsistent with the restoration to the Choctaws and Chickasaws of all their rights in the lands in question as they existed prior to the rebellion and under and by virtue of the treaties preceding the treaty of 1866. These provisions, therefore, of said articles 10 and

45 do restore the said Choctaw and Chickasaw nations to their rights as beneficiaries of the trust existing in their favor in the lands in question as these rights and equities existed prior to said rebellion.

Other circumstances showing that it was not the intention of the parties to said treaty, in inserting the said third article thereof, to divest the lands in question of said trust in favor of the claimants are found by contrasting with the consideration of \$300,000 which was stipulated to be paid for said cession made in article 3 the dealings of the Government with other Indian tribes, hereinafter stated.

The quantity of land embraced in said cession is 7,713,239 acres. Excluding from this estimate the \$800,000 paid for the lease and cession embraced in section 9 of the treaty of June 22, 1855 (and which must be excluded because the \$800,000 there provided for was paid for the Choctaw lands extending to the western boundary of the United States from the one hundredth degree of west longitude, lying between the Red and Canadian rivers, and embracing a strip of country correctly estimated by the United States authorities to contain over 6,500,000 acres, and because the said \$800,000 if applied to the said purchase lying west of the one hundredth meridian would be less than 12 cents per acre), the \$300,000 paid for said cession is less than 4 cents an acre. (See report of Acting Commissioner of Indian Affairs, R. V. Belt, of September 13, 1890.)

And, besides, this said \$300,000 was not to be paid to the said Indians, but was to be held in trust for them subject to the full performance of the conditions set forth in said article 3, hereinabove quoted; and claimants aver that at the time of making said treaty it was foreseen that the performance of the conditions of said article, in favor of the freedmen of said nation, would cost, and did in fact cost, the Choctaws, upon and after their adoption of said freedmen, more than twice their proportionate share of said amount of \$300,000; this by reason of what was required and resulted from satisfying said allotments of 40 acres of land to be taken out of the home lands of the Choctaw Nation, and the other obligations resulting from the adoption of said freedmen.

Claimants further show, by way of contrasting article 3 of the said treaty of April 28, 1866 (construed by the present defense to completely cut off all equities and interests of the Choctaws and Chickasaws in the lands embraced by said article), with the dealings of the Government of the United States with other Indians located in said Indian country, whose conditions and lands were substantially the same as those of the Choctaws and Chickasaws, the following examples of the transactions of the Government with such other tribes regarding their lands:

The treaty of June 14, 1866 (14 Stats., 785), with the Creek Nation of Indians, made only two months later than said treaty of April 28 with the Choctaws and Chickasaws, in the third article thereof, cedes to the United States, at the price of 30 cents per acre, the west half of their entire domain, estimated to contain 3,250,560 acres of land, the aggregate price paid therefor being \$975,168. This price is eight times as great as the price allowed by article 3 of the treaty of April 28, 1866, for the lands of the Choctaws and Chickasaws, even if said \$300,000 had been paid free from the conditions and incumbrances above quoted. The lands of the Creeks were adjacent and equivalent in value per acre to the lands ceded by the Choctaws and Chickasaws; and yet this cession by the Creeks, for which 30 cents an acre was allowed and paid, was made expressly in trust to be used as homes for such other civilized Indians as the United States might

choose to settle thereon, thus reserving to the Creeks their reversionary and equitable interest in said lands. The United States has fully recognized this equitable interest in the act of Congress of March 1, 1889 (25 Stats., 759), appropriating \$2,280,857.10, which was paid to said Creek Nation for its equitable interest in said lands, being at the rate of \$1.25 per acre, deducting, however, the payment made in article 3 of the treaty of June 14, 1866, and 20 cents for lands theretofore assigned to and occupied by other Indians.

Again, take the case of the Seminole Indians. It will be seen that by the third article of the treaty of March 21, 1866 (14 Stats., 756), the Seminoles ceded to the United States, "in compliance with the desire of the United States to locate other Indians and freedmen thereon," their entire domain, embracing a tract of land ceded to the Seminoles by the Creeks under the provisions of article 1 of the treaty with the Creeks and Seminoles of August 7, 1856 (11 Stats., 699). This article 3 states the quantity of land ceded to be 2,169,080 acres, and the United States agreed to pay therefor \$325,362, or 15 cents an acre, and this although the cession was made subject to the equity in favor of the Seminoles, entitling them to the land in the event of its ceasing to be used as aforesaid. For this equity, so retained by the Seminoles in virtue of said article 3 of the treaty of March 21, 1866, the United States subsequently paid to the Seminoles the sum of \$1,912,942.02, appropriated by the act of March 2, 1889 (25 Stats., 1004), and which price was at the rate of \$1.25 per acre, subject to the same deductions as were made in the above-stated case of the Creeks.

Examples might be indefinitely multiplied wherein the Government has recognized its obligation to pay the various Indian tribes for their equities in the lands which have been ceded to the United States for the purpose of occupancy by other Indians, all going to show that where lands were so ceded, and where the United States decided to become the full owner thereof, and to make the same a part of the public domain, subject to disposition as such, there, and in every such case, the United States has purchased the equities of the Indians in such lands at the price of \$1.25 an acre. But such examples can not all be here introduced, because it would make this petition too voluminous.

Claimants further aver and charge that in the fifteenth section of the act of Congress, approved March 3, 1891 (26 Stats., 1025), entitled "An act making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with various Indian tribes, for the year ending June 30, 1892, and for other purposes," there is contained a provision in the words and figures following, to wit:

And the sum of two million nine hundred and ninety-one thousand four hundred and fifty dollars be, and the same is hereby, appropriated, out of any money in the Treasury not otherwise appropriated, to pay the Choctaw and Chickasaw nations of Indians for all the right, title, interest, and claim which said nations of Indians may have in and to certain lands now occupied by the *Cheyenne and Arapahoe Indians* under Executive order: said lands lying south of the Canadian River, and now occupied by the said Cheyenne and Arapahoe Indians; *said lands have been ceded in trust by article three of the treaty between the United States and the said Choctaw and Chickasaw nations of Indians, which was concluded April 28, 1866, and proclaimed on the 10th day of August of the same year, and whereof there remains, after deducting allotments as provided by said agreement, a residue ascertained by survey to contain two million three hundred and ninety-three thousand one hundred and sixty acres; three-fourths of this appropriation to be paid to such person or persons as are or shall be duly authorized by the laws of said Choctaw Nation to receive the same, at such time and in such sums as directed and required by the legislative authority of said Choctaw Nation, and one-fourth of this appropriation to be paid to such person*

or persons as are or shall be duly authorized by the laws of said Chickasaw Nation to receive the same, at such time and in such sums as directed and required by the legislative authority of said Chickasaw Nation; this appropriation to be immediately available and to become operative upon the execution, by the duly appointed delegates of said respective nations specially authorized thereto by law, of releases and conveyances to the United States of all the right, title, interest, and claim of said respective nations of Indians in and to said land (not including Grier County, which is now in dispute) in manner and form satisfactory to the President of the United States; and said releases and conveyances, when fully executed and delivered, shall operate to extinguish all claim of every kind and character of said Choctaw and Chickasaw Nations of Indians in and to the tract of country to which said releases and conveyances shall apply.

Claimants further say that the lands which, by the above-quoted section, are declared to "have been ceded in trust by article 3 of the treaty between the United States and the said Choctaw and Chickasaw nations of Indians," concluded April 28, 1866, include and embrace all of the lands involved in the present suit as well as all other lands so ceded by article 3 of the treaty of April 28, 1866.

Claimants further say that the effect of the contract between the United States and the Choctaw and Chickasaw nations, which led to the enactment of the provision above quoted from said section 15, and to the enacting of said law by Congress, and the effect of the full execution of said agreement, was to impress upon and give to all the lands within said cession, contained in said article 3, the trust character expressly declared by said act of March 3, 1891, and that, did said cession embraced in article 3 not have the said trust character prior to the enactment of said statute of March 3, 1891, the enactment of said section 15, and the execution of the contract which led to said enactment of said section 15, making appropriation to pay for the part of said cession occupied by the Cheyennes and Arapahoes, yet said enactment and the transactions leading thereunto, evidenced by said provision above quoted from section 15, do impress upon all the lands embraced in said cession, including the lands involved in this suit, the character of a trust in favor of the claimants, as hereinbefore asserted and set forth, and do give to the claimants the ownership of the equity hereinabove described, and for the value of which this action is prosecuted.

#### FOURTEENTH.

Claimants further show to the court that ever since the making of said treaty with them of the 28th of April, 1866, the defendant, the Government of the United States, acting by and through its appropriate officers having official charge of the lands in controversy herein, and of the duty of determining what the legal status of said lands was, and of controlling the use, possession, and occupation thereof, and in the exercise of their official control over said lands, has continuously and expressly acknowledged that said lands so in controversy in this suit had not, either owing to the said cession contained in said article 3 of the treaty of April 28, 1866, or otherwise, ceased to be Indian trust lands, or had ceased to be subject to the trust created by said article 9 of said treaty of June 22, 1855, or had become lands in the full and absolute ownership of the United States, and, on the contrary thereof, expressly acknowledge in their official dealing with said lands that the same were still trust lands, and as such subject to the equities which entitled claimants to the ownership and value of such lands in the event of the Government deciding to discontinue the occupancy thereof by Indians, this action of the Executive of the Government being here set forth and relied on as tending to give to said article 3 of said treaty of April 28, 1866, the interpretation herein contended for, to wit, that said ces-

sion did not cut off or bar said equity of claimants in such land embraced in said cession of said third article.

The following are examples of the said action of said officers of the Government acknowledging and asserting the said continued existence of said trust after the making of said treaty of April 28, 1866, in favor of claimants in said lands in controversy in the present case:

(a) The Secretary of the Interior, Hon. Carl Schurz, in a letter to the Secretary of War dated May 1, 1879, speaking of the lands embraced in said third article of the treaty of April, 28, 1866, says that said last-named treaty "substituted a direct purchase for the lease" made by article 9 of said treaty of June 22, 1855, "but did not extinguish or alter the trust," this being written by the Secretary in reply to an inquiry from the Secretary of War as to the right of the Government to expel from said lands intruders by military force under the laws regulating the care of Indian country as provided in section 2147 of the Revised Statutes, the decision of the Secretary being that said lands were still Indian country and subject to said trust in favor of the Indians, and so advised the Secretary of War, and, based on said advice, the President of the United States, on the 12th of February, 1880, issued the proclamation found in volume 21 of the United States Statutes at Large, pages 798, 799, commanding intruders in said Indian country to depart, etc.

(b) The Senate of the United States, on the 7th of February, 1882, called upon the Interior Department for information in reference to the right of occupation by settlers of any portion of the Indian Territory. In answer to that inquiry, on April 25, 1881, C. W. Holcomb, Acting Commissioner of Indian Affairs, to the Secretary of the Interior, S. J. Kirkwood, made the report which was transmitted to the Senate and is found in Senate Ex. Doc. No. 111, Forty-seventh Congress, first session, in which report, among other things, the Acting Commissioner says:

The Choctaw and Chickasaw cession of April 28, 1866 (14 Stats., 769), was, by the tenth section thereof, made subject to the conditions of the compact of June 22, 1855 (11 Stats., 613), by the ninth article of which it is stipulated that the land should be appropriated for the permanent settlement of such tribes or bands of Indians as the United States might desire to locate thereon.

On the fourth page of said document is the following additional statement by the Acting Commissioner touching the status, among others, of the lands in controversy in this case:

The title of the United States to lands in the Indian Territory is, as heretofore shown, subject to a specific trust, and it is not within the lawful power of either the Legislative or Executive Departments of the Government to annihilate such trust or to avoid the obligations arising thereunder.

Claimants, by reference thereto, make said report (Ex. Doc. No. 111) a part of this petition.

(c) On the 23d of January, 1884, the Senate passed a resolution asking the Secretary of the Interior to advise the Senate of the "present status of lands in the Indian Territory" (all lands in the Indian Territory). In reply to this inquiry, on February 14, 1884, Secretary Teller states as follows:

These lands were acquired by treaties with the various Indian nations or tribes in that Territory in 1866, to be held for Indian purposes, and to some extent for the settlement of the former slaves of some of said nations, or portions thereof. Such are the purposes for which said lands are now being used or held according to the common understanding of the objects of the treaties by which they were acquired, and from these arise the necessity for, or obligation to keep said lands in their present condition of occupancy or otherwise. (See Senate Ex. Doc. 109, Forty-eighth Congress, first session.

(d) In a letter to the Secretary of the Interior by Hiram Price, Commissioner of Indian Affairs, dated January 31, 1884, touching, among others, the lands in controversy in this case, the Commissioner sets forth the disposition that had been made of the lands ceded by the Choctaws and Chickasaws by the third article of said treaty of April 28, 1866, and shows that they were, like all other lands ceded by the various Indian tribes in 1866 to the United States for the purpose of settling Indians thereon, appropriated to the settlement of various Indian tribes, just as claimants insist was the purpose of said cession in said article 3; and the various tracts are specifically designated, and shows that all of said leased district embraced in said cession in said third article was so assigned to the settlement of Indians, except Greer County, which was not so appropriated, because claimed by Texas. He concludes the said letter in the following words:

This being the condition of things, it is clear that no authorized settlement could be made by any persons in the Territory, except under the provisions of the intercourse laws, such persons having first obtained the permission provided for in those statutes. It may be further stated that no part of said Territory remains free from appropriation either to a direct trust assumed by treaty or by reservations for tribes thereon under Executive order, except that portion still claimed by the State of Texas and lying between the Red River and the North Fork of the same.

(e) In a letter by R. V. Belt, Acting Commissioner of Indian Affairs, to the Secretary of the Interior, and which was written in answer to a communication from the Hon. S. W. Peel, on behalf of the Committee on Indian Affairs of the House of Representatives, asking the views of said Commissioner in regard to the sale and relinquishment by the Choctaws and Chickasaws of their lands west of the ninety-eighth degree of west longitude, embracing the lands in controversy in the present case, said information being asked for by said House committee for the purpose of throwing light on the propriety of enacting into law a bill then pending before the House, being House bill 12106, Fifty-first Congress, first session, entitled "A bill to fully execute article 3 of the treaty between the United States and the Choctaw and Chickasaw nations of Indians, concluded on the 28th day of April, 1866," the said Commissioner fully considers and presents the documents and authorities throwing light on the question whether said trust in favor of claimants still exists, or whether it was extinguished by said article 3 of said treaty of April 28, 1866.

In this report by the said Acting Commissioner, he, among other things, presents a statement of the utterances of the officers of the Government regarding the status of said lands here in controversy. In that report the said Acting Commissioner, in view of all the facts and considerations gone over therein, reaches the conclusion which he expresses in the following words:

I am inclined, therefore, to the opinion that the Choctaw and Chickasaw Indians have good ground for the claim that the United States took the lands ceded by them upon the trust to settle other Indians and freedmen thereon, as the policy upon which the negotiations were made clearly indicated its desire and purpose to do.

#### FIFTEENTH.

Claimants further show to the the court that, in making said treaty of the 28th of April, 1866, and especially in agreeing to said article 3 thereof, the Choctaw and Chickasaw nations, and their representatives who negotiated the said treaty, were moved, influenced, and induced, in a large degree, to make said treaty and said third article thereof by the assurances held out to them and their said representatives, by the

commissioners of the United States authorized and sent to negotiate the said treaty, that the propositions hereinbefore set forth, including said fifth proposition, asserting that part of the Indian country was to be set apart to the purchase for the use of such Indians from Kansas or elsewhere as the Government might desire to colonize therein, and especially by the address to the representatives of the Choctaw and Chickasaw nations, and other tribes, made by the honorable president of said commission, D. N. Cooley, on the 9th of September, 1865, at the convention at Fort Smith, in which he reasserted to said representatives of the Indian tribes that such treaties must contain substantially, among others, the said fifth proposition reported in the official proceedings of said meeting in the following words:

A portion of the lands hitherto owned and occupied by you must be set apart for the friendly tribes now in Kansas and elsewhere, on such terms as may be agreed upon by the parties and approved by the Government or such as may be fixed by the Government.

In this address of the president of said commission, as appears by the official minutes of said meeting of September 9, 1865, he—

then stated that the agents will be supplied with printed copies of the address, and are requested to go with an interpreter to their respective tribes for the purpose of fully explaining what is said there,

which advice was followed.

Claimants further show to the court that many other like assurances were, by said officers and agents of the United States and the commissioners authorized to make said treaties, held out from time to time to the claimants and their representatives engaged in considering and making said treaty, of like character with the assurances and statements contained in said address of the 9th of September, 1865, some of which are hereinabove specifically set forth.

Claimants further show that the said treaty of the 28th of April, 1866, including the third article thereof, was agreed to on the part of the Choctaw and Chickasaw nations, and their representatives, on the faith of the assurances so held out to them by the said commissioners of the United States to the effect that said lands were being acquired by the United States for the special and specific purpose of settling Indians thereon, and upon no other trust or purpose, and that said cession in article 3 was subject to the said trust and condition, and subject to the reservation and equity in favor of claimants that if said lands embraced by said cessions should cease to be occupied by Indian tribes and become divested of said trust and part of the absolute public domain of the United States, open to occupation and entry under the land laws thereof, or otherwise devoted to purposes not expressed or contemplated by said fifth proposition, then the equity of the claimants, the Choctaw and Chickasaw nations, should attach and inure to them in immediate right and possession, as such equity is hereinabove set forth; and but for their faith and trust in said representations, so made by the commissioners of the United States, and their confidence that said treaty of the 28th of April, 1866, would and in substance did embody the said provisions establishing and securing to claimants the said equity in said lands, the Choctaw and Chickasaw nations would not have assented to or made said treaty; and claimants have, during the years which have elapsed since said treaty was made, failed to make any effectual objections to said treaty, because of their then and continuing belief that said equity was in substance secured to the claimants by the provisions of said treaty as made, and further by reason of their reliance on the truth of the assurances by the Govern-



ment of the United States, some of which are hereinabove set forth, that such was the intent and effect of said treaty.

Claimants further aver and charge that to now repudiate said equity and trust in favor of claimants on the faith of which said treaty was made as aforesaid would be most unjust to claimants and would operate, though not so intended, as a fraud against the claimants, and would be against justice and equity.

#### SIXTEENTH.

Claimants further show to the court that the practical construction given to the provisions of said treaty at the time of its being negotiated for, at the time of its actual negotiation, and ever since its ratification by Congress and by the commissioners, officers, and agents of the United States whose duties connected them with said negotiations, with the making of said treaty, and with the interpretation and execution of the provisions thereof, has at all times been an interpretation which gave and secured to claimants, the said Choctaw and Chickasaw nations, the rights and equities in said lands embraced in said article 3 of said treaty of the 28th of April, 1866, some examples of which practical construction and interpretation are hereinabove set forth.

Now, to depart from and ignore that interpretation on the faith of which, as aforesaid, said treaty was assented to by the Choctaw and Chickasaw nations, and to adopt an opposite construction, cutting off claimants from all equities and interest in said lands, would not only operate as a great wrong against the claimants, but would also be to disregard that settled rule for interpreting treaties, statutes, and other provisions of law which ordain that "the construction given to a statute by those charged with the duty of executing it ought not to be overruled without cogent reasons." (113 U. S., 571, and cases there cited.)

#### SEVENTEENTH.

Claimants further show to the court that for the Government of the United States, without the consent of the Choctaw and Chickasaw nations, to cut off and debar said nations from their equities that would arise, in immediate possessory right, to such nations at and upon the accomplishment of the disposition of said lands involved in this controversy, which is provided for and contemplated by said act of the 2d of March, 1895, would not only be a most injurious and flagrant violation of the property and treaty rights of the claimants in regard to said equities herein asserted by them, but such appropriation of said lands to the public domain and the disposition thereof under the homestead and other laws of the United States would be a palpable and most injurious violation of other treaty obligations existing in favor of the Choctaw and Chickasaw nations under and in virtue of the provisions of said treaty of April 28, 1866.

One of the provisions of a treaty which would be violated by disposing of the lands in controversy as part of the public domain, provided claimants are indeed entitled to the equities which they hereinbefore set up and assert, is found in article 43 of said treaty of the 28th of April, 1866, which stipulates that no white person shall be permitted to go into said Territory unless incorporated in one or the other of the said claimant nations, with the exception of officers, agents, and employees of the Government, and of any internal improvement company or persons traveling through or temporarily sojourning in said nations, or either of them.

## EIGHTEENTH.

Claimants further show to the court, in the alternative that if the court should find and hold said article 3 of said treaty of the 28th of April, 1866, does make and constitute an absolute conveyance of the title in and to the lands in controversy herein, divested of all equities and trusts in favor of claimants, and this court should reach that conclusion notwithstanding all the facts herein set forth, then still these claimants are entitled to the decree of this court securing to them all the rights and equities hereinabove claimed and set forth, notwithstanding the said effect of said cession of said third article of said treaty of April 28, 1866. Because the claimants say that if such is the effect of said article 3 as the same now stands, then the fact that said article omits to set forth and state the said trust and equity expressed in said proposition 5 hereinabove set forth, and omits to reserve and secure to these claimants the right and equity of the ownership of said land which it was the design of claimants and of the Government of the United States to secure to these claimants in the event that said lands should cease to be used for the settlement of Indians, and should be disposed of as is provided in said act of Congress of the 2d of March, 1895, is due to mistake and inadvertence on the part of the commissioners and officers of the Government of the United States who procured the making of the said treaty of April 28, and of said third article thereof, and who drew the same for execution, in omitting to insert the said provisions which reserved and secured to claimants the interest, trust, and equity hereinabove set forth, as promised to be reserved and secured by the commissioners who negotiated the same, and to the mistake and inadvertence of the representatives of the claimants in assenting to and executing the said treaty omitting said reservation of said equity in favor of claimants.

The facts going to show that said omission of said clause, proposition 5, above named, was the result of mistake on the part both of the officials of the Government of the United States who negotiated for, drew, and procured the execution of said treaty, and also of the Choctaw and Chickasaw nations and their commissioners and agents who conducted the negotiations for the making of said treaty, and who procured the execution thereof on behalf of the Choctaw and Chickasaw nations, are the same facts which are hereinabove set forth, going to show (a) that it was expressly agreed and asserted that said proposition 5 should be inserted in all the treaties then being negotiated; (b) the agreement of the said Choctaws and Chickasaws that the provisions of said seven propositions should be inserted in all the treaties then being negotiated, including that with the Choctaws and Chickasaws, with the exception of the above-named modification of proposition 7; (c) that the Commissioner of Indian Affairs, before said treaty was concluded, reported that substantially such provision should be inserted in said treaty as is hereinabove quoted from his annual report of 1864; (d) that the said Commissioner in his annual report of 1865 repeated that "with the Choctaws and Chickasaws a treaty was agreed upon upon the basis of the seven propositions heretofore stated;" (e) the fact that said proposition 5 was in substance inserted in the other treaties being negotiated for at said convention at Fort Smith, Ark., held in September, 1865, along with the said treaty of the 28th of April, 1866, and which were negotiated under conditions substantially the same as that negotiated with the Choctaws and Chickasaws; (f) the inequity and injustice that would be involved in making said article 3 extinguish

all equities of the claimant nations in the lands embraced in said article upon and for the considerations expressed in said article, while to the other tribes then being negotiated with, and from whom the Government did not withhold their equities in lands embraced in their respective treaties of the year 1866, but, on the contrary, have purchased and paid therefor as hereinabove set forth, and all the other facts hereinbefore set forth.

Claimants therefore aver and charge that if said article 3 as it stands does extinguish said equities of claimants, then the said provisions of said article ought, in justice and equity, to be by this court so reformed as that it will not extinguish said rights and equities of the claimants in and to the lands here in controversy, and the other lands embraced in the cession of said article 3.

#### NINETEENTH.

Claimants further show to the court that the affiliated bands of Indians who are named in the above-quoted provision of the act of March 2, 1895, are fractions or parts of certain ancient tribes of Indians, as claimants are informed and believe, and therefore aver, to wit, of Delawares, Caddoes, Keechies, Towaconies, and Wacoos.

The words "affiliated bands," as employed in said last-named act of Congress, may take in fractions of other tribes, but as to this claimants are not informed, and can not aver.

Claimants further show to the court that the Wichita and affiliated bands of Indians named in the above-quoted provision of said act of March 2, 1895, and who are, by said act, required to be made defendants herein, will have, after the lands here in controversy are disposed of as provided in said last-named act under the homestead laws of the United States as modified by said last-named act, no right to or interest in the proceeds of the disposition and sale of said lands, and which proceeds are required by said act of the 2d of March, 1895, to be deposited in the Treasury subject to the judgment of the Court of Claims in the suit therein provided for, but the whole of said money so deposited will be the property of claimants in virtue of all the premises herein set forth, and especially in virtue of the fact that the treaties herein set forth conveyed and secured to the Choctaw and Chickasaw nations the ownership of the lands here in controversy as between the United States and the said Choctaw and Chickasaw nations, and also as between the last-named two nations and the Wichita and affiliated bands of Indians, and all other Indians or Indian tribes.

Claimants further show, aver, and charge that, as between the United States and them, it was, by reason of treaty obligations existing between the United States and claimants, and herein set forth, beyond the competency of the United States, as against the grants and provisions of said treaties above named of the 18th of October, 1820 (7 Stats., 211), of the 20th of January, 1825 (7 Stats., 234), of the 27th of September, 1830 (7 Stats., 333), of the said patent of the 23d of March, 1842 (see Exhibit A), of the 17th of January, 1837 (11 Stats., 573), of the treaty of the 22d of June, 1855 (11 Stats., 611), and said treaty of the 28th of April, 1866 (14 Stats., 769), to grant unto the Wichitas and affiliated bands any title or interest in the lands in controversy, or in the proceeds thereof, except the right of occupancy and possession contemplated and secured by the said fifth proposition agreed, at the negotiation of the last-named treaty, to be inserted in such treaty, and which right of possession and occupancy and of all interest, by any Indian tribes, bands, or persons, in said lands, and in the proceeds thereof, became and were absolutely terminated upon the termination

of the occupancy of said lands by any Indian tribe, band, or person who might, by the United States, be colonized or settled upon said lands under the reserved rights named in said fifth proposition hereinabove set forth; and, therefore, and by reason of the premises aforesaid, all the rights of the said Wichitas and affiliated bands in said lands and their proceeds were and are cut off and terminated by and upon the occurrence of the disposition of said lands under the homestead laws, as provided in the said act of March 2, 1895, and all interest of said Wichitas and affiliated bands in the moneys arising from said sale thereof are absolutely and forever extinguished.

Claimants further aver and show to the court that if the United States have come under any obligations, by contract, treaty, or otherwise, with said defendants, the Wichitas and affiliated bands, whereby said last-named tribe and bands will be entitled to any compensation or equities, owing to their being deprived of the possession of said lands here in controversy, or of any or all of the moneys arising from the sales thereof, then such claim of the Wichitas and affiliated bands inure to them against the United States and are so held, and are not held against these claimants or against the moneys required by said act of March 2, 1895, to be deposited in the Treasury.

Claimants further aver and charge that the said claimant nations are entitled, as against the said Wichita and affiliated bands, to be compensated for the value of the lands which by said act of the 2d of March, 1895, are to be allotted to the members of the Wichita and said affiliated bands, and also as against the United States, and are further entitled, as against the United States, for the value of all lands reserved from the lands here in controversy by said act of March 2, 1895, for the use of common schools, university, agricultural college, normal school, and public buildings of the Territory and future State of Oklahoma, and that the provisions of the act of Congress under which this suit is brought are such as to entitle this court, as a court of equity, to ascertain the quantity and the value of the said lands so allotted and reserved, and to give to these claimants a decree for the said value of said allotted and reserved lands as well as for said proceeds of the sale of lands required by said act to be deposited in the Treasury.

#### PRAYER.

Wherefore, all the premises aforesaid considered, the Choctaw and Chickasaw nations pray as follows:

1. That proper process and notice be given, as provided by said act of March 2, 1895, to the defendants herein, to wit, to the United States and to the Wichita and affiliated bands of Indians, which are hereinabove named and set forth, and who are made defendants herein, notifying them to make answer hereto as provided by said act of March 2, 1895.

2. That the court will pass its decree in favor of these claimants decreeing that they are in law and equity entitled to the proceeds of the sale of all lands here in controversy as to which proceeds it is provided in the said act that the same shall be deposited in the Treasury subject to the judgment of the court in this suit, and also are entitled to the just and full value of all lands which shall be allotted and reserved under the provisions of the said act and of the agreement which by said act is accepted, ratified, and confirmed, as therein provided, as such value shall be ascertained under an accounting made under the order and direction of this court.

3. That this court will from time to time, as said sales are made and the proceeds thereof deposited in the Treasury, as provided by said act,

pass its order and decree directing the payment out of said proceeds so deposited to the Choctaw Nation three-fourths of said proceeds of sale so deposited, and to the Chickasaw Nation the other one-fourth.

4. That, when the quantity and value of said lands to be allotted as aforesaid to the members of the Wichita and affiliated bands and reserved for school and other purposes, as hereinbefore set forth, are ascertained and determined, the court will decree the claimants aforesaid in said proportions of three-fourths to the Choctaws and one-fourth to the Chickasaws of the entire value of said lands so allotted to said several and respective members of the Wichita and affiliated bands and reserved for school and other purposes.

5. And for all such other and further relief as may be demanded by justice and equity, including the reform of the terms of said article 3 of said treaty of the 28th of April, 1866, provided the court shall find that these claimants are not entitled to the rights and equities herein prayed for in the absence of such reform by the decree of this court.

THE CHOCTAW AND CHICKASAW NATIONS,  
By JAMES G. STANDLEY, *Delegate Choctaw Nation.*  
J. M. MCGOWAN,  
*Attorney of Chickasaw Nation,*  
629 F street NW., Washington, D. C.  
SAM'L SHELLABARGER and  
J. M. WILSON,  
SHELLABARGER & WILSON,  
*Of Counsel for Choctaws,*  
No. 1416 F street NW., Washington, D. C.  
ROB'T L. OWEN.

DISTRICT OF COLUMBIA, ss:

Before me, the undersigned, a notary public in and for the District aforesaid, personally appeared James S. Standley, the delegate and agent of the claimant, the Choctaw Nation, for the purpose of conducting and transacting the business of said nation in the city of Washington and elsewhere relating, among other things, to all the matters and premises set forth in the above and foregoing petition, who, being duly sworn, on solemn oath says:

1. That no assignment or transfer of the claims set forth in the foregoing petition, or any part thereof, or any interest therein, has been made by the claimant, the Choctaw Nation, except the assignment set forth in the foregoing petition to the Chickasaw Nation.

2. That the claimant, the Choctaw Nation, is justly entitled, as herein shown and set forth, to the rights, equities, property, and moneys set forth and claimed in the said foregoing petition against the defendants, the Wichita and affiliated bands of Indians, and also against the United States, after allowing all just credits and set-offs.

3. That affiant has fully read and knows the contents of the foregoing bill in equity and petition; that all the matters and things therein set forth as matters known to affiant of his own knowledge are true in substance and in fact, and that all the other matters therein set forth as upon information and belief he believes to be true.

JAMES S. STANDLEY.

Subscribed and sworn to before me this 21st day of March, A. D. 1895.

[SEAL.]

EDMUND VANDYKE, *Notary Public.*

DISTRICT OF COLUMBIA, ss:

At the same time and place personally appeared Jonas H. McGowan, who, being duly sworn, deposes and says that he is an attorney for

the Chickasaw Nation, one of the parties claimant in the above petition, and that he has duly read the same, and that the same is true upon his information and belief; that no assignment or transfer of the claim set forth in the foregoing petition, or any part thereof, or any interest therein, has been made by the claimant, the Chickasaw Nation; that the claimant, the Chickasaw Nation, is justly entitled, as herein shown and set forth, to the rights, equities, property, and moneys set forth and claimed in the foregoing petition against the defendants, the Wichita and affiliated bands of Indians and the United States, after allowing all just credits and set-offs.

JONAS H. MCGOWAN.

Subscribed and sworn to before me this 21st day of March, A. D. 1895.

[SEAL.]

EDWARD VANDYKE, *Notary Public.*

EXHIBIT A.

The United States of America, to all to whom these presents shall come, greeting:

Whereas, by the second article of the treaty begun and held at Dancing Rabbit Creek on the fifteenth day of September, in the year of our Lord one thousand eight hundred and thirty (as ratified by the Senate of the United States on the 24th day of February, 1831), by the commissioners on the part of the United States, and the mingo, chiefs, captains, and warriors of the Choctaw Nation, on the part of said nation, it is provided that "the United States, under a grant specially to be made by the President of the United States, shall cause to be conveyed to the Choctaw Nation" a tract of country west of the Mississippi River, in fee simple, to them and their descendants, to inure to them while they shall exist as a nation, and live on it, beginning near Fort Smith, where the Arkansas boundary crosses the Arkansas River, running thence to the source of the Canadian fork, if in the limits of the United States, or to those limits; thence due south to Red River, and down Red River to the west boundary of the Territory of Arkansas; thence north along that line to the beginning, the boundary of the same to be agreeably to the treaty made and concluded at Washington City in the year 1825:

Now, know ye that the United States of America, in consideration of the premises, and in execution of the agreement and stipulation in the aforesaid treaty, have given and granted, and by these presents do give and grant, unto the said Choctaw Nation the aforesaid "tract of country west of the Mississippi," to have and to hold the same, with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging, as intended "to be conveyed" by the aforesaid article, "in fee simple to them and their descendants, to inure to them, while they shall exist as a nation and live on it," liable to no transfer or alienation, except to the United States, or with their consent.

In testimony whereof I, John Tyler, President of the United States of America, have caused these letters to be made patent, and seal of the General Land Office to be hereunto affixed. Given under my hand, at the city of Washington, the twenty-third day of March, in the year of our Lord one thousand eight hundred and forty-two, and of the independence of the United States the sixty-sixth.

By the President:

JOHN TYLER.

DAN'L WEBSTER,

*Secretary of State.*

JOHN C. SPENCER,

*Secretary of War.*

T. HARTLEY CRAWFORD,

*Commissioner of Indian Affairs.*

Recorded, volume 1, page 43.

J. WILLIAMSON,

*Recorder of the General Land Office.*

Executed in the Bureau of Topographical Engineers.

JOHN J. ALBERT,

*Col., Corps T. Engineers.*

Returned to the War Department for the Choctaw Nation, March 24, 1842.

[L. S.]

E. M. HUNTINGTON,

*Commissioner of the General Land Office.*